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Written statement* submitted by the Society for Threatened Peoples, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[31 August 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Persecution of war crimes witnesses and victims seeking justice in Sri Lanka*

The UN Human Rights Council investigation (OISL) into the crimes committed during the final stages of the Sri Lankan civil war in May 2009 is expected to present its findings to the UNHRC in September 2015. OISL called for witnesses to give their accounts of Sri Lanka during the war; the Sri Lankan Government (GoSL) reacted by increasing fear and intimidation on the Tamil population in general and on the people publicising the OISL call in particular.
Most of the witnesses who came forward to OISL had fled the country since 2009. They provided compelling stories of the events they witnessed. But they did so under OISL assurances of anonymity fearing for the lives of their relatives in Sri Lanka. They fear for their lives if they go back to Sri Lanka and in numerous UK court cases, their fear has been found to be valid.

Sri Lanka is not a safe place for witnesses. The current UNHCR guidelines, which came into effect in December 2012, recognise certain 'Witnesses of Human Rights Violations' and 'Victims of Human Rights Seeking Justice' as a category of persons at risk in Sri Lanka. This was reaffirmed in the (current) United Kingdom asylum country guidance case[1] which found that individuals who have "given evidence … implicating the Sri Lankan security forces, armed forces or the Sri Lankan authorities in alleged war crimes" are at "real risk of adverse attention or persecution on return as potential or actual war crimes witnesses." Thus, if prosecutions are conducted in Sri Lanka, the vast majority of witnesses who contributed to the OISL will not be able to provide evidence.

Eye witnesses

Almost all witnesses to OISL did so under assurances of confidentiality. In August 2015 Together Against Genocide [TAG] re-interviewed OISL witnesses on their attitudes towards testifying in Sri Lanka. All interviewees re-affirmed they cannot safely testify in Sri Lanka. Below are some of the more serious war crimes they witnessed:

Cluster bombs

"When it exploded, within five minutes the area would be destroyed. Within that noise, 500-600 people would vanish like that."

"The government for the first time threw cluster bombs into that protective zone … one of them exploded and two or three people died. After 4-5 minutes, 100-200 people started dying."

"People arrived like onions, their skin was black and would fall off … When we went there to help and carry people we saw how their skin peeled off. No one who was brought there could be saved."

Targeting hospitals

"People were under trees and next to bunkers in tents…. The cluster bomb hit the hospital ward and the pieces hit the trees. [The hospital] was destroyed at the side walls."

"[The hospitals were intentionally hit] … There were so many people, there were signs, there were ambulances, there were drone flights above as well. So they knew exactly what was going on there … There was a cross-printed white flag at the entrance of the hospital, and above the trees so that you could see it from the air and the rooftop was also painted with a cross so that you could see it."

Killing those surrendering

"They took them there, tied their hands and legs and used the sand of the walls to bury them alive while they were begging and praying"

"At the end, there were around 400 meters between us and the army. We saw those who were at the back of the group, shells were hitting from all sides…those who were half a km behind us were dying en masse. Those were people who were about to surrender."

"When we walked [to surrender] … on both sides soldiers were on the ground, so when we walked people were pushing and running towards the army. I watched how from both sides the army shooting at people who were walking at the edges. They were running towards the road from the forest, when they were running towards the bridge, the army was shooting from 300-400 meters afar the people from right there. … We were watching it. We

[1] GJ and Others (post-civil war returnees_ Sri Lanka CG [2013] UKUT 00319 (IAC) [7(d)], reaffirmed by the Court of Appeal in MP, NT v Secretary of State for the Home Department [2014] EWCA Civ 829]

watched how they captured young boys who were standing next to us, between 20-30 years and making them sit down on the sides. They sat them down right there and began executing them. Bodies were already amassing there."

Raping those surrendering

That was the time when we surrendered to the army when I saw with my own eyes how they raped them in front of us. I saw many rapes happening. My sister also died after being raped.

I saw how they bit the breasts, the cheeks and raped them…they shot them in front of us.

Unsafe to speak

Sri Lanka continues to be unsafe for those prepared to speak of war crimes they witnessed. While intimidation of the general population continues, people identified as potential witnesses and their relatives continue to be specifically targeted.

The GoSL reaction to the OISL call for witnesses in Sri Lanka was to target potential witnesses or those who could facilitate witness communication. The Sri Lankan military ordered internet cafe owners to alert the authorities of anyone scanning or copying documents to be sent to OISL.[2] A man was arrested in Kilinochchi for distributing OISL evidence collection forms.[3] In March 2015, 8 people were arrested for making a documentary, which contained scenes portraying the Sri Lanka Army as "immoral, inhumane and atrocious"[4].

While witnesses are willing to give testimony in camera outside Sri Lanka, they fear death upon return to Sri Lanka and they fear for their families left behind.

"If I didn't have children, I'd surely provide testimony because I'm not that sad about dying. They will certainly kill us. The moment we will give testimony, they won't let us go. They will certainly kill us in one way or another. They won't let us stay alive."

"I can't return to my country anymore. If I do, they will certainly arrest me. If they arrest me, a lot of troubles with start and I don't think they will keep me."[5]

"We cannot provide testimony for a tribunal in Sri Lanka. When the UNHRC was talking to us there, the government already gave us limits to how much we could say. Those who did were beaten … So there is certainly no way to say the truth there."

Persecution

The UK courts recognise that those who are identified as witnesses in Sri Lanka continue to be in danger. The Court of Appeal confirmed that witnesses already known to the GoSL for giving statements to the LLRC are at a real risk of persecution.[6] Recent cases have extended this, to find even those who have been willing to testify more generally were in danger of targeting by the GoSL.

In GT [2013], where the appellant had disseminated information on the use of banned weapons, the tribunal found:

"He is, I consider, quite evidently at equal risk as he would be if he were a journalist as his actions are implicitly critical of the government and expose it to criticism or opprobrium, not just locally but internationally."

In PS [2015] the court found that as the appellant had given evidence to an international organisation, he was of adverse interest to the authorities and consequently at risk of torture in detention in Sri Lanka.

"I find also that someone who has given evidence of genocide or war crimes by Sri Lankan forces is likely to be viewed as working towards the destabilisation of the government".

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[2] <http://www.tamilnet.com/art.html?catid=13&artid=37450> 26 October 2014

[3] <http://www.tamilguardian.com/article.asp?articleid=12682> 26 October 2014

[4] <http://tamilguardian.com/article.asp?articleid=14233> 30 March 2015

[5] All Interviews August 2015

[6] GJ and Others Sri Lanka CG

In SA [2014], the tribunal found that a journalist who had provided evidence on the last stages of the war, would be at risk if he was returned to Sri Lanka. The judgement notes:

> *"On the evidence I have, I regard it as improbable that he would be able to negotiate the airport successfully."*

In SG [2015] the court found SG was at risk of persecution for reasons including:

> *"he has given detailed evidence of events in Sri Lanka which would tend to substantiate alleged war crimes being committed by the Sri Lankan army"*

Conclusion

Sri Lanka is not a safe place for witnesses willing to speak up against the GoSL or for victims seeking justice. Witnesses in Sri Lanka who have spoken out, and any witnesses outside Sri Lanka who have provided testimony, are at risk of persecution if they return to Sri Lanka to testify. If prosecutions are conducted in Sri Lanka, regardless of whether under domestic or international mechanisms, the vast majority of witnesses who contributed to the OISL will not be able to provide evidence safely.

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*United Against Genocide (TAG), NGO without consultative status, also shares the views expressed in this statement.